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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

EMMANUEL A. ADIGUN,

Plaintiff,

v.

INTERNAL REVENUE SERVICE, SOCIAL
SECURITY ADMINISTRATION, ECMC,
PREMIER CREDIT OF N. AMERICA, NYS
HIGHER EDUCATION SERVICES, and
WACHOVIA EDUCATIONAL SERVICES,

Defendants.

NOTICE OF REMOVAL

20 Civ. 3676 ()

From the Supreme Court of the State of New
York, County of Bronx, Index No.
260664/2019

PLEASE TAKE NOTICE THAT Defendants the Internal Revenue Service (the “IRS”) and the Social Security Administration (the “SSA”) (collectively, the “Government”) by and through their attorney, Geoffrey S. Berman, United States Attorney for the Southern District of New York, hereby remove the above-captioned action to the United States District Court for the Southern District of New York. The grounds for removal are as follows:

1. On or about August 29, 2019, *pro se* plaintiff Emmanuel A. Adigun (“Plaintiff”) filed an order to show cause (Index No. 260664/2019) in the Supreme Court of the State of New York, Bronx County (“New York State Supreme Court”), naming as defendants the IRS and the SSA. The order to show cause also named non-government defendants— Educational Credit

Management Corporation (“ECMC”), Premier Credit of N. America, NYS Higher Education Services, and Wachovia Educational Services. A true and correct copy of the order to show cause with T.R.O. in civil action (the “OTSC”) is attached hereto as Exhibit 1.

2. On November 25, 2019, the New York State Supreme Court granted the OTSC against ECMC on default, but denied the OTSC to the other named defendants because the court was not satisfied that they were properly served. A true and correct copy of this decision is attached hereto as Exhibit 2.

3. On or about February 5, 2020, defendant ECMC filed a Notice of Motion to Vacate Order Granting Plaintiff’s Order to Show Cause with T.R.O. Entered on Default Against Educational Credit Management Corporation Pursuant to CPLR § 5015(a)(1). A true and correct copy of this document is attached hereto as Exhibit 3.

4. The OTSC requested that the court stop the SSA’s monthly deductions from benefits otherwise payable to Plaintiff with the deducted amounts to be paid to ECMC on account of debts that SSA understood Plaintiff owed to ECMC, based on Plaintiff’s claim that his obligations to ECMC were fulfilled. The OTSC further requested an order directing the IRS to discontinue any diversion of Plaintiff’s tax refunds to ECMC, again, based on Plaintiff’s claim that his obligations to ECMC were fulfilled. *See* OTSC. Plaintiff also requested that the SSA refund to him all of the monies that it previously withheld from his benefits and paid to ECMC, and that the IRS refund him all of the tax refund offsets that the IRS paid to ECMC. *Id.* In addition, Plaintiff asked the court to stay all collection actions, pending the hearing and determination of the originating motion on notice. *Id.*

5. This action may be removed pursuant to 28 U.S.C. § 1442(a)(1) because it names an agency of the United States as defendant. In addition, Plaintiff’s claims potentially implicate

federal defenses such as sovereign immunity. *See F.D.I.C. v. Meyer*, 510 U.S. 471, 475 (1994) (“Absent a waiver, sovereign immunity shields the Federal Government and its agencies from suit.”). Accordingly, under § 1442(a)(1), this action may be removed to this Court. *See Parker v. Della Rocco*, 252 F.3d 663, 665 & n.2 (2d Cir. 2001) (“[I]t is plain that plaintiff’s . . . claims . . . implicate federal defenses such as sovereign immunity . . .”).

6. Removal pursuant to Section 1442(a)(1) is timely under 28 U.S.C. § 1446(b). Section 1446(b)(1) authorizes removal “within 30 days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based, or within 30 days after the service of summons upon the defendant if such initial pleading has then been filed in court and is not required to be served on the defendant, whichever period is shorter.” On information and belief, the SSA and IRS have never been served in the state court action.

7. Venue is proper in this district under 28 U.S.C. §§ 1441(a) and 1442(a) because the state court where the action is pending is located in this district.

8. Pursuant to 28 U.S.C. § 1446(d), all adverse parties are being provided with written notice of the filing of this Notice of Removal.

Dated: May 12, 2020
New York, New York

Respectfully submitted,

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Defendant

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Defendant